

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**WALTER DUANE WHITE,**

**Plaintiff,**

**v.**

**Civil Action No. 2:07cv15**

**WARDEN JOYCE FRANCIS;  
VALORIE RAPPOLD, AW Operation;  
KAREN LAMBRIGHT, Health Service Administrator;  
DR. E. MACE, F.C.I. Physician;  
MARK DIV, Physician Assistant;  
ELIZABETH MASTELLER-BORAM, Physician Assistant;  
R. SPEARS, Food Service Administrator;  
K. McCORD, Religious Service Coordinator;  
I. BRANNON, Medical Records-Medical Trip Coordinator;  
CECIL NICHOLS, Associate Warden Programs,**

**Defendants.**

**ORDER**

It will be recalled that on December 2, 2008, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on December 12, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), wherein Plaintiff alleges that Defendants acted with deliberate indifference to his serious medical needs, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the

Plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that Defendants' Motion to Dismiss (Docket #81) shall be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that the Plaintiff's claims in his Bivens Complaint and Amended Complaint regarding diabetic shoes; Hepatitis C treatment; denial by the URC to refer him to an outside urologist; diabetic diet; treatment of his skin condition; and his inability to see a psychologist shall be, and the same hereby are, **DISMISSED** without prejudice for failure to exhaust his administrative remedies prior to filing the Complaint. It is further

**ORDERED** that all remaining claims in Plaintiff's Bivens Complaint (docket #1) and Amended Complaint (docket #18) shall be, and the same hereby are, **DISMISSED with prejudice** pursuant to 28 U.S.C. §§1915A(b) and 1915(e) for failure to state a claim. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendants. It is further

**ORDERED** that all other pending motions in this civil action, filed by Plaintiff, shall be, and the same hereby are, **DENIED** as moot. It is further

**ORDERED** that the above-styled civil action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

**ENTER:** February \_\_5<sup>th</sup>\_\_, 2009

/s/ Robert E. Maxwell  
United States District Judge